IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1235 of 1990

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JANAK HASMUKHLAL PARIKH - Applicant(s)

Versus

PIYUSHKUMAR R PARIKH - Opponent(s)

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Appearance :

MS KALPANA BRAHMBHATT for VASUBEN P SHAH for Petitioner

MR DM THAKKAR for Respondents No(s).: 1 & 2

Respondent No. 3 :: Served

Respondents nos. 3, 4 & 5 :: Unserved

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 21/07/2005

ORAL JUDGMENT

As the respondents nos. 4 & 5 have remained unserved till the date, their names are ordered to be deleted from the cause title of the Revision Application.

The petitioners are the heirs and legal representatives of the plaintiff who died after the pronouncement of the *impugned* judgment by the lower appellate Court. Feeling aggrieved by the judgment and order dated 5th March, 1990 passed by the learned Assistant Judge, Kheda in Civil Appeal No. 66 of 1986, the petitioners have preferred present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent**"].

The plaintiff, ancestor of the petitioners herein, was the owner of the suit premises situated at Khambhat. The suit premises was leased in the year 1946 to one Dr. Ratilal Parikh for medical practice. The said Dr. Parikh carried on the medical practice in the suit premises. After his death on 16th September, 1971, his sons – the defendants nos. 1, 2 & 3, came into possession of the estate of the late Dr. Parikh. The respondent no.3, who is a qualified Dentist, started his practice in the suit premises. The plaintiff instituted Regular Civil Suit NO. 286 of 1980 in the Court of learned Civil Judge [JD], Khambhat against the heirs of late Dr. Parikh for recovery of possession of the suit premises. According to the

plaintiff, none of the heirs of the late Dr. Parikh was a qualified doctor and that none of them was carrying on the practice along with late Dr. Parikh; that the late Dr. Parikh was suffering from cardiac ailment and he had discontinued practice sometime before his death; that none of the defendants was a tenant within the meaning of the Rent Act. The tenancy should, therefore, revert to the plaintiff.

The suit was contested by the defendant no.3. According to the defendant no.3, he had acquired a BDS degree and registration as a Dentist in the month of June, 1970. He had started medical practice as a Dentist in the suit premises during the lifetime of his father, late Dr. Parikh. He, therefore, was a tenant within the meaning of Section 5 [11](c)(ii) of the Rent Act. The learned Civil Judge, by judgment and order date 16th January, 1986, held that the defendant no. 3 had acquired BDS degree and was duly registered with the Dental Council. The defendant no. 3 had started his practice in the suit premises during the lifetime of late Dr. Parikh. He, therefore, was a tenant within the meaning of Section 5 [11](c)(ii) of the Rent Act. Feeling aggrieved, the plaintiff preferred Civil Appeal No. 66 of 1986 in the Court of learned District Judge, Kheda. The learned Assistant Judge dismissed the Appeal. The lower appellate Court confirmed the finding

that the defendant no. 3 had become tenant within the meaning of Section 5 [11](c)(ii) of the Rent Act. The lower appellate court also observed that though late Dr. Parikh had passed away as far back as in the month of September, 1971, and the defendant no. 3 was carrying on his practice as a Dentist in the suit premises since the year 1970, the plaintiff did not seek eviction till the year 1980. The plaintiff had thus accepted the defenant no.3 as a tenant in the suit premises. Feeling aggrieved, the heirs and legal representatives of the deceased-plaintiff have preferred the present Revision Application.

I am of the view that both the Courts below have manifestly erred in construing the provisions contained in Section 5 [11](c)(ii) of the Rent Act. Section 5 [11](c) of the Rent Act defines the word, "**Tenant**". Clause (c) (ii) thereof reads as under :-

> **"[c](ii) in relation to premises let for business,trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court."**

Admittedly, in the present case, the suit premises was leased to late Dr. Parikh to carry on the profession

of medical practice. Inheritance of the tenancy right of late Dr. Parikh in the suit premises, therefore, shall be governed by the aforesaid Clause (ii). To inherit tenancy under the said proviso, a member of the family of the tenant shall be required to prove that, "*he was carrying on business, trade or storage with the tenant in the suit premises at the time of the death of the tenant*." Admittedly, neither of the defendants nos. 1, 2, 4 & 5 were qualified doctors. Neither of them had claimed tenancy under Section 5 [11](c)(ii) of the Rent Act. It was the defendant no. 3 alone who claimed that he was a qualified doctor and had been carrying on the Dental practice in the suit premises at the time of the death of late Dr. Parikh which has been believed by both the Courts below. In my opinion, however, the Courts below have overlooked the requirement that the member of the family of the tenant should be carrying on business **with the deceased tenant in the leased premises**. *Indisputably*, even the defendant no. 3 was not a qualified doctor i.e. he did not possess MBBS degree. He, therefore, could not have been carrying on medical practice with the late Dr. Parikh. Carrying on dental practice in the suit premises is one thing and carrying on medical practice in the suit premises with late Dr. Parikh at the time of his death is another thing. Both cannot be equated. In my opinion, therefore, even though the defendant no. 3 might be

carrying on dental practice in the suit premises since prior to the death of late Dr. Parikh he did not become tenant within the meaning of Section 5 [11](c)(ii) of the Rent Act. Tenancy, therefore, ought to revert to the plaintiff. The plaintiff was, therefore, entitled to decree for recovery of the possession of the suit premises.

In view of the above discussion, the Revision Application is allowed with cost. Regular Civil Suit NO. 286 of 1980 for recovery of possession of the suit premises instituted in the Court of learned Civil Judge [JD], Khambhat is allowed. The petitioners do recover possession of the suit premises from the defendants. The defendants do handover vacant and peaceful possession of the suit premises to the plaintiffs. Rule is made absolute. Defendant no.3 shall bear the cost throughout.

{Miss R.M Doshit, J.}

*Prakash**